

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 112 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 Yes 2 to 5 No

DK SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner

MR DA BAMBHANIA for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 25/06/98

ORAL JUDGEMENT

The petitioner retired on 30.6.1995. An enquiry was instituted against him vide memorandum dated 26.6.1995. By the impugned order dated 4.12.1997 penalty of cut of Rs. 369/- from the pension amount on permanent basis has been inflicted.

2. At the material time the petitioner was holding the post of Industrial Promotion Officer in the

Department of Commissioner, Cottage & Village Industries. One Haribhai Meghjibhai Dhamelia, Principal, Uttar Buniyadi Gram Vidyalaya, Dudhana, Tal. Palitana submitted a complaint dated 12.7.1991 stating that the proceedings with regard to proposal of Gram Vidyalaya, Dudhana for starting training classes of knitting was delayed by the delinquent for more than a year and he demanded a sum of Rs. 2000/- for the said work which was paid to him by the institution. On the basis of the said complaint two charges were framed against the petitioner firstly that he delayed proceedings and secondly he received bribe of Rs. 2000/-. The petitioner replied to the notice denying the allegations. On October 9, 1995 an Enquiry Officer was appointed. During the enquiry the complainant, Principal Haribhai Meghjibhai did not appear. However, another witness Hirabhai Kanjibhai Padaya appeared and made a statement with respect to receipt of Rs. 2000/- by the petitioner on 12.7.1991. The petitioner was given an opportunity to cross-examine the said witness. Enquiry Officer found the petitioner guilty of both the charges and submitted his enquiry report on 31.8.1996 to the Disciplinary Authority. The Disciplinary Authority passed order dated 19.4.1997 on the basis of enquiry report holding the petitioner guilty and imposing a penalty of cut of Rs. 300/- per month from his pension amount for a period of three years as per B.C.S.R. 189(A). The petitioner was called upon to show cause against the same. The petitioner asked for the enquiry report which was supplied to him under communication dated 9.5.1997. Ultimately Disciplinary Authority by order dated 4.12.1997 imposed punishment of monthly cut of Rs. 369/- from his pension amount on permanent basis. The order also disclosed that the said order was passed after consultation with Gujarat Public Service Commission.

3 Mr. Girish Patel, learned Sr. counsel has raised various contentions challenging the order dated 4.12.1997. It is contended that the entire enquiry is vitiated as there is delay of more than five years in instituting the enquiry. Complaint against the petitioner was filed in the year 1991 and the enquiry was instituted in the year 1995 only four days before the retirement. It is submitted that serious prejudice is caused to the petitioner on account of delay inasmuch as the star witness in the case i.e. the Principal of the vidyalaya, Haribhai Meghjibhai on account of retirement did not appear before the enquiry officer depriving the petitioner to cross-examine him with respect to the correctness of allegations made in his complaint. Learned counsel placed reliance on the decision of the

apex court in STATE OF PUNJAB VS. CHAMANLAL GOYAL reported in (1995) 2 SCC 570. In the said case the court held that delay in departmental enquiry can be put forward as ground for quashing charges, the court has to weigh all the factors for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In that case the delay of 5 1/2 years, on its own facts were not considered sufficient to quash the enquiry. The Supreme Court reversed the judgement of the High Court which had quashed the Departmental proceedings on the ground of delay. The factor in favour of the petitioner for quashing of enquiry on the ground of delay, urged is that he has been deprived of an opportunity to cross examine the original complainant. A discussion of the evidence hereinafter will show that there is otherwise sufficient material on record to prove the guilt of the petitioner delinquent and as such no substantial prejudice is caused to the petitioner on account of delay in enquiry. It is also contended that every employee has a rational expectation to retire peacefully. There is no substance in this contention also. The person who has served the department for long is also expected to go home with clean chit. If there is any allegation against him he must be prepared to answer the same and get a clean chit to retire peacefully.

4. It is next contended that in the original chargesheet there are two witnesses namely (1) Haribhai Meghajibhai Dhamelia, the Principal and (2) Hirabhai Kanjibhai Padaya. The first witness has not been examined. This aspect has been elaborately discussed by the enquiry officer in his report. The said witness has not appeared as he has resigned from the office of the Managing Trustee from 1.4.1994 and he never wanted to spoil the relation with the new Managing Trustee and the officers of the department. Be that as it may, Hirabhai Kanjibhai Padaya has been examined and in his original statement dated 12.9.1997 he has stated that the petitioner had received Rs. 2000/- from Haribhai Meghajibhai, the Principal of the said vidyalaya. He has given the same statement before the enquiry officer on 31.6.1996. It is, of course, true that earlier on a stamp paper of 8.1.1996 he had denied the allegations. However, this cannot be a ground to discard the statement of the said witness Hirabhai Kanjibhai Padaya. It is not in dispute that the said papers remained with the petitioner for more than one year. It appears that the said statements were managed on the stamp paper by the petitioner. The finding of fact arrived at by the enquiry officer does not call for interference by this court.

5. It is next contended that the order of punishment is vitiated, the same being in violation of the principles of natural justice inasmuch as the punishment of cut of 25% of the pension i.e. Rs. 369/- per month on permanent basis is said to be on the basis of the recommendation of the Gujarat Public Service Commission and the said report has not been made available to the petitioner. The report of the G.P.S.C. has been utilised by the disciplinary authority at the back of the petitioner. The learned counsel has placed reliance on the decision of the Supreme Court in the case of STATE BANK OF INDIA VS. D.C. AGGARWAL reported in AIR 1993 SC 1197. In the said case the punishment was imposed on the basis of the report of the Central Vigilance Commission, which was not supplied to the delinquent on the ground that it was a privileged document. The court held that a prejudice was caused on account of non-supply of the vigilance report, vitiating the order of punishment. This case is of no assistance to the petitioner as in that case Central Vigilance Commission report was based on certain factual datas collected by the investigating team and in fact it was the basic document on the basis of which the petitioner in that case was punished. But in the instant case a copy of the inquiry report as well as other documents were made available to the petitioner. Papers were sent to G.P.S.C. which included inquiry report and the reply of the petitioner submitted in response to the notice given to him. G.P.S.C. on the basis of said material agreed with the findings of the enquiry, except on the question of penalty and recommended for higher penalty of cut of 25% of the pension on permanent basis. This recommendation has been accepted by the Disciplinary Committee. Thus, non-supply of the report does not vitiate the enquiry and its finding so far as the merit of the charges are concerned. However, there is substance in saying that before enhancing the proposed penalty on the recommendation of the G.P.S.C. the petitioner ought to have been given an opportunity of hearing. I cannot agree with the contention of Mr. Bambhainia that no opportunity of hearing at this stage was necessary as there was variation only with respect to recommended penalty, the final decision was taken by the Disciplinary Authority considering the views of the enquiry officer and the G.P.S.C. Therefore, in my view, so far as the enhanced penalty is concerned, it deserves to be struck down on this ground.

6. It is lastly contended by the learned counsel that in the facts of the case, penalty inflicted is harsh

and excessive. Considering all facts and circumstances of the case and particularly seriousness of the allegation of bribe, in my view punishment of cut of Rs. 300/- per month for a period of three years cannot be said to be harsh and excessive.

7. Consequently this Special Civil Application is partly allowed. The punishment of cut of Rs. 369/- per month from the pension of the petitioner on permanent basis inflicted by the order dated 4.12.1997 is quashed and set aside and the same is substituted by the penalty proposed under communication dated 19.4.1997 i.e. cut of Rs. 300/- from the pension for a period of three years. The impugned order stands modified to that extent. Rule is made absolute. There shall be no order as to costs.

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